

plaintiff refused to answer questions at deposition, even when reminded of his obligation to the court's orders). Here, as in Bobal and McDonald, plaintiff's failure to appear at her deposition is based not on a misunderstanding but on plaintiff's wilfulness and bad faith.

## CONCLUSION

Accordingly, it is recommended that defendant's motion should be granted and plaintiff's complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 37(b)(2)(C). See McDonald v. Head Criminal Court Supervisor, 117 F.R.D. 55, 58 (S.D.N.Y. 1987), *aff'd* 850 F.2d 121 (2d Cir 1988) (dismissal is proper where plaintiff refuses to play by the "basic rules of the system upon whose very power the plaintiff is calling to vindicate his rights").

## FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made to the District Judge within the ten day period. Failure to file a timely objection to his Report generally waives any further judicial review. Marcella v. Capital Dist. Physician's Health Plan, Inc., 293 F. 3d 42 (2d Cir. 2002); Small v. Secretary of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Am., 474 U.S. 140 (1985).

SO ORDERED

Signed by Lois Bloom  
LOIS BLOOM  
United States Magistrate Judge

Dated: April 1, 2004  
Brooklyn, New York